

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY VAUGHT, JUDGE

CA05-1139

June 14, 2006

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[DR-02-2629]

GLEN ROSE

APPELLANT

HON. MARY SPENCER McGOWAN,
CIRCUIT JUDGE

V.

MELDIA ROSE

APPELLEE

AFFIRMED

Appellant Glen Rose brings this appeal from a September 6, 2005, order awarding appellee Meldia Rose costs and attorney's fees in the amount of \$10,000 following their divorce action. The sole issue on appeal is whether the trial court abused its discretion by awarding these attorney's fees and costs. Finding no error, we affirm.

The parties were married in 1958 and at the time of the divorce hearing had been married for forty-five years. Meldia Rose was sixty-five years old and Glen Rose was seventy years old. At trial, Meldia testified regarding her medical condition as well as her current and future income levels. She testified that she had been with the Bureau of Legislative Research for twenty-six years and was considering retirement. Likewise, Glen testified regarding his health and income level. At the time of the hearing, Glen owned and operated his own

business. After the hearing, the trial court made an unequal division of the marital property. In its order, the court noted that Meldia had extraordinary medical expenses and was in a state of poor health. The court went on to justify the unequal division by noting Meldia's "host of medical problems" and that she had "made substantial contributions to the family as a homemaker." The court concluded that it would "be inequitable to divide the retirement or investment accounts" that were in Meldia's name.

Following the divorce decree, Meldia filed a petition for attorney's fees and costs in the amount of \$24,569.99. In the petition, Meldia set out several disputes with Glen that resulted in her incurring greater legal costs. Specifically, she alleged that Glen engaged in an unwarranted discovery dispute over tax returns, refused to sign a warranty deed and committed other contemptible behavior relating to the release of funds attached to her non-marital inherited land, and secreted \$10,000 of marital funds in the trunk of his automobile. After consideration of Meldia's allegations, the trial court awarded her \$10,000 in attorney's fees and costs. It is from this award that Glen appeals.

Arkansas Code Annotated section 9-12-309(2) (Repl. 2002) provides that the court may award a reasonable attorney's fee in the final decree of an action for absolute divorce. An award of an attorney's fee is within the discretion of the trial court in a divorce case and will not be reversed absent an abuse of discretion. *Anderson v. Anderson*, 60 Ark. App. 221, 963 S.W.2d 604 (1998).

On appeal, Glen argues that if the trial court's unequal division of marital property and assets fairly balanced the parties' interests, the additional \$10,000 award of fees created a new disparity. However, contrary to Glen's position, attorney's fees and costs are not a part of the ultimate equitable balance of marital property. In a divorce action, the award of fees and costs are a separate consideration awarded only at the trial court's discretion—a discretion to which we offer great deference. *Anderson, supra*.

Here, in its consideration of Meldia's petition, the trial court first considered the relative financial positions of the parties. The court then found that Glen was inconsistent in his testimony and unreasonably resisted compliance with discovery requests during the course of the litigation, which resulted in additional costs and fees that Meldia was forced to incur. Finally, the court properly utilized its superior position to determine the reasonableness of the fees incurred by awarding an amount substantially less than the \$24,000 plus in fees and costs Meldia requested. Based on these actions and findings of the trial court, we hold that the trial court did not abuse its discretion by awarding \$10,000 to Meldia for fees and costs incurred in this divorce action.

Affirmed.

CRABTREE and BAKER, JJ., agree.